

1 east, or Arizona side, of the River. The Reservation was subsequently expanded
2 by Executive Orders dated November 22, 1873; November 16, 1874; May 15,
3 1876; and November 22, 1915.

4 9. In 1964, Congress affirmed the CRIT Reservation as established and
5 expanded by Executive Order, providing that “unallotted lands of the . . .
6 Reservation . . . are . . . tribal property held in trust by the United States for the
7 use and benefit of [CRIT].” Pub. L. 88-302, 78 Stat. 188, 189 (April 30, 1964)
8 (“1964 Act”). The 1964 Act authorized the Secretary to approve leases of lands
9 on the Reservation, but it initially held in abeyance the Secretary’s leasing
10 authority on lands on the California side of the River until such time that those
11 lands were “determined to be within the reservation.” Pub. L. 88-302, Sec. 5.

12 10. On January 17, 1969, the Interior Solicitor Edward Weinberg issued
13 a legal opinion in which he determined that the western boundary of the
14 Reservation included a portion of Riverside County, California. Edward
15 Weinberg, U.S. Dep’t of the Interior, Opinion Letter on Western Boundary of the
16 Colorado River Indian Reservation (Jan. 17, 1969), *as reprinted in* Opinions of
17 the Solicitor of the Department of the Interior Relating to Indian Affairs 1917-
18 1974 at Vol. II 2096, https://thorpe.law.ou.edu/sol_opinions/p2076-2100.htm.
19 The Secretary of the Interior, Stewart Udall, concurred in the opinion and

1 instructed the Director of the Bureau of Land Management (“BLM”) to suspend
2 certain surveys and reinstate others to serve as the line of the western boundary of
3 the Reservation. Exhibit 1, Memorandum from the Secretary of the Interior to
4 BLM Director (January 17, 1969).

5 11. In 1970, the Secretary of the Interior, Walter Hickel, confirmed
6 Secretary Udall’s “final, official and unqualified declaration that the ‘Benson
7 Line’ was the proper location of the western boundary of the Reservation.”
8 Exhibit 2, Letter from the Secretary of the Interior to CRIT Chairman (June 2,
9 1970).

10 12. The Bureau of Indian Affairs (“BIA”) then published a notice in the
11 Federal Register that extended the Colorado River Reservation Indian leasing
12 program to “those lands which the Secretary of the Interior has determined,
13 pursuant to the Act of April 30, 1964 (78 Stat. 188), to be within the Colorado
14 River Reservation.” Certain California Lands Determined to Be Within the
15 Colorado River Reservation, 35 Fed. Reg. 18,051 (Nov. 25, 1970).

16 13. The Subject Property, identified administratively by the BIA as Lot
17 17 of the McCoy Subdivision, is situated in a portion of the San Bernardino Base
18 and Meridian, Township 4 South, Range 23 East, Section 11, a short distance
19 north of Blythe, Riverside County, California. The Subject Property is within the

1 exterior boundaries of the lands determined to be within the Colorado River
2 Indian Reservation as noticed in the Federal Register on November 25, 1970.

3 **B. Defendant's Unauthorized Occupation and Use of the Subject**
4 **Property**

5 14. After the November 25, 1970, Federal Register notice, the BIA
6 began approving permits to occupy the Reservation lands located west of the
7 Colorado River, including the permit for the Subject Property.

8 15. CRIT utilized standard-form permits that were approved by the
9 *Resources Development Committee* (RDC), a subcommittee of CRIT's Tribal
10 Council. Each permit was captioned with "Permit No. WB-[XXX](R) Western
11 Boundary Permit," with "Permit (Homesite)" written below.

12 16. The Articles included therein identify the parties, describe the
13 premises, state the terms of the permit, and list the rental amounts to be paid. The
14 permits identify CRIT as the permitter and includes signature lines for the
15 Permittee, the Tribal Chair, Tribal Secretary, and the BIA Superintendent.

16 17. Once a permit was executed, it was delivered to BIA's Land, Titles,
17 and Records Office for recordation. A recorded permit contained a nine-digit
18 record number beginning with 603. That number was stamped in black ink and
19 placed in the lower righthand corner of each page. Once the BIA received a

1 permit, it stamped the first and last page with ink, noting the permit was received
2 and identifying the date, time, and location of the receiving BIA office.

3 18. On September 21, 1979, CRIT issued Permit No. WB-199(R) to
4 Thomas Shea. Exhibit 3, Permit No. WB-199(R) (“Permit”). The Permit was
5 approved by the BIA Superintendent of the Colorado River Agency
6 (“Superintendent”) on December 4, 1979. *Id.* at 13.

7 19. Article 2 of the Permit states that the Subject Property is “within the
8 Colorado River Indian Reservation.” *Id.* at 1-2.

9 20. Article 3 of the Permit states that “[t]he purpose of this permit shall
10 be for the use and occupancy by the Permittee named herein and his immediate
11 family only, for single family residential occupancy.” *Id.* at 2.

12 21. Article 4 of the Permit states that it “may be terminated at the end of
13 the initial [one year] term or at the end of any such successive one year period by
14 written notice served by the Secretary or the Permittee at least ninety (90) days in
15 advance thereof.” *Id.*

16 22. Article 5 of the Permit states that “[t]he Permittee . . . covenants and
17 agrees to pay in advance, to the BUREUA OF INDIAN AFFAIRS for the use and
18 benefit of Permitter, rental, in the amount herein set out . . . or as may be adjusted
19 from time to time.” *Id.* at 2-3. Article 5 of the Permit also provides that, “if any

1 installment of rental is not paid on or before the due date, interest at the rate of
2 12% per annum shall become due and payable and will run until said rental or
3 payment is paid.” *Id.* at 3. At the time of signing, annual rent for the Subject
4 Property was \$270.00. *Id.*

5 23. Article 6 of the Permit prohibits the Permittee from placing
6 “permanent improvements” on the Subject Property without first obtaining
7 written consent from CRIT and requires the Permittee to remove personal
8 property “not later than thirty (30) days from the date of expiration of this permit
9 or any extension(s) thereof.” *Id.* at 3-4.

10 24. Article 15 of the Permit states that “Permittee understands and agrees
11 that this permit shall not be deemed to confer upon Permittee any equity right,
12 title or interest to or in the permitted lands, and further, Permittee hereby
13 relinquishes all past, present or future claims of right, title or interest in, the lands
14 held under this permit or any other lands within the Colorado River Indian
15 Reservation” *Id.* at 9.

16 25. Article 18 of the Permit states that:

should Permittee default in the payment of any installment or rent or
any other sum when due . . . the Secretary . . . may declare this permit
forfeited by giving Permittee written notice thereof, and upon such

forfeiture, Permittee shall have no further rights or interest hereunder or in or to the permitted premises or any part thereof, and Permitter may re-enter and take possession of the permitted premises and all buildings and improvements thereon, and may cast from Permittee and all persons claiming under the permit from the premises.

1 *Id.* at 10.

2 26. Article 22 of the Permit states that “[h]olding over by the Permittee
3 after the termination of this permit shall not constitute a renewal or extension
4 hereof or give the Permittee any rights hereunder or in or to the Permitted
5 premises.” *Id.* at 11.

6 27. Article 25 of the Permit states that the Permit “and the covenants,
7 conditions, and restrictions hereof shall extend to and be binding upon the
8 successors, heirs, assigns, executors, and administrators of the parties hereto.” *Id.*
9 at 12.

10 28. Article 27 of the Permit states that “[s]ubletting or assignment of this
11 permit may be made only with the written consent of all the parties hereto.” *Id.*

12 29. The annual rent for the Subject Property increased from \$270.00 to
13 \$720.00 in January of 1983. Exhibit 4, Payment Record.

1 30. The annual rent for the Subject Property increased from \$720.00 to
2 \$1,200.00 in January 1986. Exhibit 4, Payment Record.

3 31. On May 29, 1986, Shea assigned the Permit to Defendant. Exhibit 5,
4 Assignment to Ferguson. Defendant agreed to “fulfill all obligations, conditions,
5 and stipulations contained in” the Permit. *Id.* CRIT agreed to the assignment as
6 the “Lessor.” *Id.* at 2. And the Superintendent approved the assignment on June
7 10, 1986. *Id.*

8 32. On July 18, 1988, the Superintendent sent a letter to Defendant
9 informing him that he was in violation of the terms and conditions of the Permit
10 for failure to pay rent for 1988. Exhibit 6, Letter from Superintendent to Ferguson
11 (July 18, 1988). The Superintendent enclosed a bill in the amount of \$1,200.00
12 for rent, plus \$83.24 in interest. *Id.*

13 33. Defendant subsequently paid the full amount of rent owed for 1988.
14 Exhibit 4, Payment Record.

15 34. On February 10, 1989, the Superintendent sent a letter to Defendant
16 informing him that BIA had not received his rent payment of \$1,200.00 for 1989.
17 Exhibit 7, Letter from Superintendent to Ferguson (Feb. 10, 1989).

18 35. Defendant subsequently paid the full amount of rent owed for 1989,
19 1990, and 1991. Exhibit 4, Payment Record.

1 36. On October 23, 1991, CRIT sent a letter to Defendant informing him
2 that rental rates would increase for all Western Boundary lots effective January 1,
3 1992. Exhibit 8, Letter from CRIT to Ferguson (Oct. 23, 1991). The rental rate
4 increased from \$20 to \$45 per riverfront foot for river frontage lots. *Id.* This
5 increase resulted in an annual rent of \$2,700.00 for the Subject Property. The
6 letter stated that Defendant would “receive a bill for the rental in the above set out
7 amount in the near future” and that “[u]pon receipt of the rental payment your
8 permit will be automatically renewed.” *Id.*

9 37. Defendant subsequently paid the full amount of rent owed for 1993.
10 Exhibit 4, Payment Record.

11 38. On December 15, 1995, CRIT sent Defendant a letter notifying him
12 that he was in violation of Article 5 of the Permit for failure to pay the full
13 amount of annual rent for 1994 and 1995. Exhibit 9, Letter from CRIT to
14 Ferguson (Dec. 15, 1995). The letter stated that Defendant owed a balance of
15 \$3,900.00. *Id.* at 1. The letter also instructed Defendant that he had ten (10) days
16 to show cause why the Permit should not be cancelled and that, if he failed to
17 show cause, CRIT would proceed with remedies pursuant to Article 18, including
18 immediate cancellation. *Id.*

1 39. On February 12, 1996, Defendant paid CRIT \$3,000.00 in rent for
2 the Subject Property. Exhibit 10, Cash Receipt from Ferguson to CRIT (Feb. 12,
3 1996).

4 40. On August 9, 1996, the BIA Phoenix Area Director provided notice
5 to Defendant that the Permit was “declared forfeited and [was] terminated
6 effective immediately,” in accordance with Article 18 of the Permit, for failure to
7 pay the full amount of rent owed for 1995 and 1996. Exhibit 11, Letter from BIA
8 Phoenix Area Director to Ferguson (Aug. 9, 1996). The Area Director notified
9 Defendant that he owed \$3,600.00 in back rent plus interest at twelve percent per
10 annum. *Id.* Consistent with the Permit, the Area Director ordered the removal of
11 personal property from the Subject Property within 30 days from receipt of the
12 letter, but no later than September 12, 1996. *Id.* Lastly, the Area Director
13 informed Defendant that the decision would become final 30 days from receipt of
14 the letter, unless an appeal was filed with the Interior Board of Indian Appeals
15 (“IBIA”). *Id.* at 2.

16 41. Defendant did not pay back rent or remove his personal property
17 from the Subject Property as demanded in the Area Director’s August 9, 1996,
18 letter. Instead, Defendant continued to occupy and use the Subject Property
19 without authorization or permission.

1 42. On July 1, 2010, CRIT posted a notice on the Subject Property
2 informing the occupant that he was in trespass because Defendant's Permit was
3 terminated on August 9, 1996. Exhibit 12, Notice (July 1, 2010). CRIT demanded
4 that the occupant vacate the property on or before August 6, 2010; otherwise,
5 CRIT would "take legal action to remove you from the property, [and] obtain a
6 monetary judgment resulting from your continued trespass" *Id.*

7 43. On August 1, 2012, CRIT Lease Specialist, Andrea Vernoy, sent a
8 letter to Defendant informing him that to occupy the Subject Property lawfully he
9 would need to enter into a new lease and pay the back rent owed to CRIT. Exhibit
10 13, Letter from Vernoy to Ferguson (August 1, 2012). If Defendant agreed to pay
11 \$3,300 for 2011 rent, \$3,300 for 2012 rent, \$1,650 as a security deposit, and all
12 back rent, either in a lump sum or in payments over 10 years, CRIT would waive
13 the default interest owed. *Id.* at 1-2. Vernoy also informed Defendant that he had
14 the option to "walk away" if he turned over all improvements on the Subject
15 Property to CRIT. *Id.* at 2. Under this option, CRIT would forgive all past due
16 rent and interest Defendant owed. *Id.*

17 44. Defendant neither entered into a new lease and paid back rent nor
18 chose the "walk away" option. Instead, Defendant continued to occupy and use
19 the Subject Property without authorization or permission.

1 45. On April 9, 2013, the CRIT Attorney General, Rebecca Loudbear,
2 sent a letter to trespassers, including Defendant, explaining a tribal court decision
3 regarding CRIT's eviction of Roger French from the Rymer Subdivision on the
4 Reservation. Exhibit 14, Letter from Loudbear to Trespassers (Apr. 9, 2013). The
5 letter also informed trespassers that CRIT was still offering solutions to resolve
6 ongoing trespasses, but that solutions would not be available for long. *Id.* at 2.
7 The letter stated that CRIT would continue to pursue all available legal remedies
8 against trespassers on the Reservation. *Id.*

9 46. The West Bank Homeowner's Association ("WBHOA"), on behalf
10 of 29 individual trespassers, appealed to the Interior Board of Indian Appeals
11 ("IBIA") the BIA's May 31, 2016, decisions demanding that each individual stop
12 trespassing. *See* Exhibit 15, *West Bank Homeowners Ass'n v. Acting Reg'l Dir.,*
13 *Bureau of Indian Affs.*, 64 IBIA 82, 2017 WL 1192190 (IBIA Mar. 24, 2017).
14 The IBIA received notice of the appeal on September 12, 2016, nearly two
15 months after the filing deadline of June 30, 2016. *Id.* at 1. On March 24, 2017,
16 the IBIA dismissed WBHOA's appeal as untimely. *Id.* Defendant received
17 notice of the IBIA's decision. *Id.* at 5.

1 47. On information and belief, tribal officials have periodically observed
2 and inspected the Subject Property and noted each time that Defendant continues
3 to illegally occupy the premises.

4 48. Defendant's unlawful use and occupation of the Subject Property has
5 been and continues to be knowing, intentional, willful, and contrary to federal
6 law, and it has deprived the Tribes and Plaintiff of the occupancy and use they are
7 entitled to on said property.

8 **C. Legal Basis for Claims against Defendant**

9 49. The federal common law of trespass "generally comports with the
10 Restatement of Torts," *United States v. Milner*, 583 F.3d 1174, 1182 (9th Cir.
11 2009), under which trespass is defined as "the intentional use of the property of
12 another without authorization and without privilege," *United States v. Imperial*
13 *Irr. Dist.*, 799 F. Supp. 1052, 1059 (S.D. Cal. 1992). Further, "[t]he intent
14 required is simply an intent to be on the land." *Id.*

15 50. Under federal common law, remedies for trespass include
16 declaratory relief, damages, and ejectment. *See United States v. Pend Oreille Pub.*
17 *Util. Dist. No. 1*, 28 F.3d 1544, 1549 n.8 (9th Cir. 1994); *United States v. Torlaw*
18 *Realty, Inc.*, 483 F. Supp. 2d 967, 973 (C.D. Cal. 2007), *aff'd*, 348 Fed. Appx.
19 213 (9th Cir. 2009). As stated by the United States Supreme Court, "that an action

1 of ejectment could be maintained on an Indian right to occupancy and use, is not
2 open to question.” *Marsh v. Brooks*, 49 U.S. 223, 232 (1850).

3 51. Moreover, residential leases on Indian land are governed, generally,
4 by 25 C.F.R. Part 162. The Permit is a residential lease and is thus governed by
5 these regulations.

6 52. The BIA’s leasing regulations define a trespass as “any unauthorized
7 occupancy, use of, or action on any Indian land or Government land.” 25 C.F.R.
8 § 162.003.

9 53. Defendant is required to have a lease to occupy and use such
10 properties on the Reservation. 25 C.F.R. § 162.005.

11 54. When a lessee remains in possession after a residential lease is
12 terminated, the BIA may treat the unauthorized possession as a trespass and take
13 action to recover possession and pursue any additional remedies under applicable
14 law. 25 C.F.R. § 162.371.

15 55. Defendant currently has no ownership interest in the Subject
16 Property. And although Defendant recognized the Subject Property’s trust status
17 by leasing it from CRIT and paying rent accordingly, he does not now possess a
18 valid lease or permit for the Subject Property. Therefore, Defendant’s occupancy

1 and use of the Subject Property constitutes trespass under federal common law
2 and governing regulations.

3 **FIRST CAUSE OF ACTION**

4 **(Trespass)**

5 56. The United States realleges each of the preceding paragraphs as if
6 fully set forth herein.

7 57. Since at least August 9, 1996, Defendant has willfully occupied and
8 used the Subject Property without authorization or legal right. Despite being
9 notified of the termination of the Permit by letter dated August 9, 1996, and again
10 by multiple notices and letters, and being offered the opportunity to enter into a
11 new lease with CRIT or “walk away,” Defendant has not vacated the Subject
12 Property.

13 58. As a result of Defendant’s unauthorized and unlawful occupation
14 and use of the Subject Property, he has committed and is now committing a
15 continuing willful trespass on CRIT land that is subject to federal supervision,
16 authority, and restrictions against alienation.

17 59. As a direct and proximate result of Defendant’s continuing and
18 willful trespass, he has damaged and continues to damage the Tribes’ trust

1 property and the governmental interests of the United States, and he will continue
2 to do so unless and until the trespass is remedied.

3 **SECOND CAUSE OF ACTION**

4 **(Ejectment)**

5 60. The United States realleges each of the preceding paragraphs as if
6 fully set forth herein.

7 61. Since at least August 9, 1996, Defendant has willfully occupied and
8 used the Subject Property without authorization or legal right. Despite being
9 notified of the termination of the Permit by letter dated August 9, 1996, and again
10 by multiple notices and letters, and being offered the opportunity to enter into a
11 new lease with CRIT or “walk away,” Defendant has not vacated the Subject
12 Property.

13 62. As a result of Defendant’s unauthorized and unlawful occupation
14 and use of the Subject Property, he has unlawfully prevented and continues to
15 prevent CRIT from occupying and using its land, which is subject to federal
16 supervision, authority, and restrictions against alienation.

17 63. Defendant has defied and continues to defy the authority of the
18 United States, acting through the BIA, to administer the Subject Property.
19 Defendant has refused to comply with the BIA’s requests that he cease and desist

1 from his occupation and use of the Subject Property and remove all facilities and
2 equipment from the Subject Property.

3 64. Defendant's continuing occupation and use of the Subject Property is
4 unlawful and, as a direct and proximate result of that trespass, he has damaged
5 and continues to damage the Tribe's and United States' property interests, and he
6 will continue to do so unless and until he vacates the Subject Property or is
7 ejected, and his facilities and equipment are removed from the Subject Property.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, the United States of America, respectfully requests that
10 the Court provide the following relief:

11 a. Declare pursuant 28 U.S.C. §§ 2201, 2202 that Defendant's willful,
12 unauthorized, and continuing occupation and use of the Subject Property, without
13 the authorization of the Tribes and United States, constitutes a continuing trespass;

14 b. Enter a judgment for mesne profits or monetary damages caused by
15 Defendant's willful, unauthorized, and continuing occupancy, use, and disturbance
16 of the Subject Property accruing over the six years and 90 days from the date of
17 filing, including, without limitation, the fair rental value of the property,
18 administrative costs, and the costs and expenses of restoring and remediating the
19 damaged and degraded property;

1 c. Enter a judgment for pre- and post-judgment interest on all damages
2 awarded from the date of filing of this Complaint until the Judgment is paid in full;

3 d. Eject Defendant from the Subject Property;

4 e. Order Defendant to remove from the Subject Property any and all
5 equipment, personal property, buildings, and other materials placed thereon by
6 him, and abate any damage caused to the Subject Property necessary to restore the
7 property to its natural condition, or, in the alternative, authorize the United States
8 to undertake these tasks, with all costs and expenses incurred by the United States
9 to be paid by Defendant;

10 f. Award the United States all costs of suit to the maximum extent
11 permissible; and

12 g. Grant such other and further relief as the Court deems just and proper.

DATED: November 6, 2023

Respectfully submitted,

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